IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Revision No. 287 of 1999

Date of decision : October 01, 2007.

Amar Nath Sharma and another

... Petitioners

versus

State of Haryana and another

... Respondents

Coram: Hon'ble Mr. Justice A.N. Jindal

Present: Mr. S.N. Gaur, Advocate
for the petitioners.

Mr. K.S. Godara, DAG, Haryana.

A.N. Jindal, J

This petition is directed against the judgment dated 4.3.1999 passed by the learned Additional Sessions Judge, Ambala, dismissing the appeal of the petitioners against the judgment dated 30.10.1996 passed by the learned Chief Judicial Magistrate, Ambala, convicting the accused-petitioners (hereinafter referred to as 'the petitioners') under Sections 27 (a) (i), 27 (b) and 28 of Drugs & Cosmetics Act, 1940 (hereinafter referred to as 'the Act') and sentencing them as under :-

U/s 27(a)(i) of the Act	To undergo rigorous imprisonment for one year and to pay fine of Rs.1000/- each.
U/s 27 (b) of the Act	To undergo rigorous imprisonment for one year and to pay fine of Rs.1000/- each.
U/s 28 of the Act	To undergo rigorous imprisonment for six months and to pay fine of Rs.200/- each.

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However, all the sentences were ordered to run concurrently.

The factual matrix of the case is that both the accused were Registered Medical Practitioners and running their clinic at Ambala Cantt.

On 21.5.1980, C.P. Mehta, the then District Drug Inspector, Ambala during inspection of the clinic took into possession 200 tablets of prednisolone in two printed plastic bottles alleged to have been manufactured by Gratus Pharma, 71/5, Najafgarh Road, New Delhi and 120 loose tablets of chloroquin contained in a bottle lying there. Payment of both the drugs was offered to Amar Nath from whose possession the same were taken into possession but he refused to accept the price. The tablets were divided into four equal portions and same were sealed in the presence of Amar Nath petitioner. He was also offered to put his seal on the sample but he declined. Form No.XVII Ex.PA as prescribed under Rule 56 of the Drugs & Cosmetic Rules, 1945 was filled at the spot. Amar Nath petitioner in his statement disclosed that both the drugs were kept for dispensing to his patients. As per report of the Government Analyst, Haryana, the strength chloroquin phosphate in the tablets was found nil against 250 mg per tablet and as per other test report, prednisolone tablets, the laboratory observed that the contents of prednisolone were found nil against the declared percentage of 5 mg per tablet. On receipt of the aforesaid reports, notices dated 20.6.1980 Ex.PH and 5.7.1980 Ex.PK were sent to the petitioners asking them to disclose the name, address and other particulars of the person with documentary proof from whom he had acquired the adulterated drug, in response to which Amar Nath petitioner wrote two letters dated 7.7.1980 and 21.7.1980 respectively disclosing that both the drugs were

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purchased by them from M/s Dharishah Di Hatti, Ambala Cantt, however, no proof was submitted in that regard. Notice was issued to M/s Dharishah Di Hatti, Ambala Cantt and their premises were also inspected, but they were not found in possession of such drug. Gopal Dass, Proprietor of M/s Dharishah Di Hatti, Amabala Cantt. disclosed that those drugs were not purchased by Amar Nath petitioner from their shop. Consequently, a letter Ex.PB dated 15.9.1980 was written to Amar Nath petitioner asking him that Gopal Dass proprietor of M/s Dharishah Di Hatti, Ambala Cantt. has denied having sold the drugs to him. But in reply to the said letter Amar Nath petitioner reiterated his earlier stand.

On 17.9.1980 premises of manufacturer M/s Gratus Pharma was also inspected. A.S. Bhargawa, proprietor of M/s Gratus Pharma also replied that drugs seized from the shop of the petitioners were not manufactured by them. There was a lot of difference in the format of the label on the bottles containing the drug manufactured by Gratus Pharma recovered from the shop of the petitioners. The tablets recovered from the shop of the petitioners bore batch No.7372. It was further submitted by them that the said drug as manufactured by Gratus Pharma was got examined from M/s Analytical Testing Services Pvt. Limited, Okhla an approved laboratory under the Drugs and Cosmetic Rules, 1945 and as per the report drug was reported to be of standard quality. Since both the petitioners were running the shop jointly and had failed to disclose if the adulterated drugs as used by them was purchased from the licensed dealer or manufacturer, therefore, the present complaint was filed.

On trial, both the petitioners were convicted under Sections 27

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(a) (i), 27 (b) and 28 of the Act and sentenced accordingly. Their appeal against the said order was also dismissed.

Arguments heard. Record perused.

Besides the fact that the accused by way of writing letters to the District Drug Inspector, admitted having found in possession of 200 prednisolone tablets and 120 loose chloroquin phosphate tablets. There is ample evidence on the record that these drugs were purchased by the District Drug Inspector for sending them as sample to the laboratory.

The only plea set up by the accused is that they cannot be said to have committed any offence as they are protected by the Schedule 'K' of the rules. Rules 123 lays down that if the drugs specified in Schedule 'K' shall be exempted from the provisions of Chapter IV of the Act and rules to the extent and subject to the conditions specified in that schedule. The relevant part of the schedule 'K' reads as under :-

	"Class of Drugs	Extent and conditions of exemption.
85.	Drugs supplied by a registered medical practitioner to his own patient or any drug specified in Schedule C supplied by a registered medical practitioner at the request of another such practitioner if it is specifically prepared with reference to the condition and for the use of an individual patient provided the registered medial practitioner is not (a) keeping an open shop or (b) selling across the counter	All the provisions of chapter IV of the Act and the Rules made thereunder, subject to the following conditions: (1) The drugs shall be purchased only from a dealer or a manufacturer licensed under the drugs and Cosmetic Rules, 1945. (2) .....

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or (c) engaged in the importation manufacture, distribution or sale of drugs in India to a degree which render him liable to the provisions of chapter IV of the Act and the rules thereunder."

While referring to the aforesaid rule, it was urged that since they had purchased the drug from M/s Dharishah Di Hatti, therefore, they are protected from the prosecution under Chapter IV of Section 27 and 28 of the Act. This question has been discussed and decided on the basis of the evidence led by both the parties against the petitioners. No sufficient evidence has been led by the accused to prove the defence that the cash memo as produced before the Drug Inspector Ex.DA was issued by M/s Dharishah Di Hatti. They could have examined the person who issued the cash memo which was not difficult for them in order to compare the hand writing of the employee of M/s Dharishah Di Hatti on the cash memo, but no such employee or much less expert was examined. Onus lay heavily upon the accused to establish this fact particularly when the Drug Inspector during the course of investigation had verified from the shop in question as well as from the manufacturer that the drug was neither sold by M/s Dharishah Di Hatti nor was manufactured by M/s Gratus Pharma and the accused were also duly informed about this fact. Even otherwise, the bill apparently does not appear to have been issued by M/s Dharishah Di Hatti. It may be observed that the sample was seized on 21.5.1980 and the bill was produced on 13.7.1981 before the Drug Inspector. Had the accused been in

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possession of the said bill, then the same would have been supplied immediately to the Drug Inspector. It could not be believed that the cash memo could not be traced during a long period of one year and all of a sudden it was traced when the complaint was instituted.

Another forceful argument advanced by the learned counsel for the petitioners is that only Ram Nath petitioner was running the clinic in dispute and Amar Nath petitioner was running his clinic in a different shop, therefore, he is not liable for the drugs kept in the clinic by the petitioner Ram Nath.

Having given my thoughtful consideration to the contention, I do not find any force in the same for the reason that when the clinic was inspected Amar Nath petitioner was sitting there and his statement was recorded on form No.XVII Ex.PA, wherein he did not disclose the fact that Ram Nath petitioner was the proprietor of the clinic and he was temporarily sitting there only to guard the clinic in his absence. Further more, correspondence between the petitioners and the Drug Inspector continued for about one year, but at no stage this fact was disclosed by Amar Nath that Ram Nath was running the clinic in the shop in dispute and he was not liable for any act of the latter. It may be observed that this plea was taken up only for the reason that the cash memo Ex.DA placed on the record was in the name of Ram Nath petitioner as the purchaser of the medicines. This plea of Amar Nath petitioner stands falsified from the testimonies of Sushil Kumar (PW5) Proprietor of M/s Laxmi Medicos and Devinder Kumar (PW6) Proprietor of M/s Gandhi Medical Agency, who categorically deposed that the petitioners were running the clinic jointly in the same shop.

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No other point has been urged.

For the foregoing reasons, I am of the view that the trial Court has appreciated the evidence in right perspective and the findings returned by the Courts below regarding conviction of the petitioners does not suffer from any such illegality which may suggest interference by this Court.

Consequently, finding no merit in the revision petition the same is hereby dismissed.

Chief Judicial Magistrate, Ambala is directed to take necessary steps to procure the custody of the petitioners for serving remaining part of their sentence.

October 01, 2007 **(A.N. Jindal)**
'deepak' **Judge**

To be referred to Reporter: Yes/No.